With regard to the procedural point raised by Mr. Hatchard that in our procedure no rule exists which would enable the plaintiff to sue as "Karta", it seems to me that, it being now established that she is competent in law to represent the family as "Karta", Order 16 r. 9 applies, since the members of the family have the same interest as the plaintiff who represents the family. The fact that the plaintiff is not a beneficial owner of the family assets does not seem to me to affect the matter. She is not representing the members of her family as individuals. The assets belong to the joint family, not to the individual members of it. If judgment is given in the plaintiff's favour it is a judgment in favour of the family, and no individual member of it could thereafter sue in respect of this claim. He could not sue as an individual because the debt is due to the family. He could not sue as "Karta", if the family has been properly represented by the plaintiff as "Karta" and obtained judgment.

But Mr. Hatchard further argued that there is insufficient evidence that the plaintiff is in fact the "Karta" of the joint family. It seems to me that that is a matter which must be left to the trial. We are not concerned with the evidence at this stage. This is an appeal from the learned Judge's order on a summons dismissing the plaintiff's application to amend her writ upon the ground that being a woman she does not possess the legal capacity in which she now seeks to carry on the action. It is clear, in the light of the Nagpur decision to which he was not referred, that his order was wrong. I think that our decision in this appeal must be confined to that.

In my opinion this appeal must be allowed, with costs here and below, and the plaintiff's application to amend the endorsement of the writ in the terms of the summons must be granted.

Mathew, C.J. (F.M.) : — I have had the advantage of reading the judgment of the learned President with which I entirely agree. I have no doubt that had the learned trial Judge had before him the authorities which were not available to him when the application was considered he would have come to the same conclusion.

I would allow this appeal with costs here and below and agree with the proposed order by the learned President.

Buttrose, J. agreed with the judgment of the learned President.

Appeal allowed.

ANTHINARAYANA MUDALIAR
v.
AJIT SINGH.

[O. C. J. (Spenser Wilkinson, J.) January 5, 1953]

[Penang — Civil Suit No. 162 of 1951]

International Law — Procedure — Conflict of laws — Foreign judgment — Irregularity.

A judgment or decree pronounced by the Court of a foreign country will be treated and acted upon here as final, notwithstanding any irregularity of procedure under the local law, provided the foreign Court had jurisdiction over the subject matter and the person brought before it, and the proceedings do not offend against natural justice.

Cases referred to :—

(1) *Robinson v. Fenner* (1913) 3 K.B. 835.
(2) *Emanuel v. Symon* (1908) 1 K.B. 302.
(3) *Pemberton v. Hughes* (1899) 1 Ch. 781.
(4) *Jeannot v. Puerst* 25 T.L.R. 424.

CIVIL SUIT — claim on a foreign judgment.

R. D. Hume for the plaintiff.

Ong Huck Lim for the defendant.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv, Vult.

Spenser Wilkinson, J. [After stating the facts which are not relevant for the purpose of this report His Lordship proceeded] : — The only question of real difficulty in this case was the question of the service of the proceedings on the defendant. There is no doubt that he had notice of the Indian proceedings, but his contention was that as he was served with a summons showing a return date that had already passed at the time of the service there was no sufficient service upon him. The facts as to service were that the summons together with the plaint were served on the defendant on the 22nd August, 1950 in Penang. The copy of the summons so served directed the defendant to attend and answer the claim on the 17th August, 1950. On that date the case came on for hearing before the Court in Madras but the defendant being absent the hearing was adjourned to the 19th December, 1950 and a notice to this effect was inserted in a Madras newspaper. When the case came on for hearing again on the 19th December, 1950 judgment was given *ex parte* after the hearing of evidence for the plaintiff.

In support of his contention that this service was insufficient so as to render the judgment contrary to natural justice Mr. Ong Huck Lim cited Rule 79 in *Dicey's Conflict of Laws* (6th edition at page 396) and

the case of *Robinson v. Fenner*[1]. I do not think this decision really supports Mr. Ong Huck Lim's argument. The following is the material passage from the judgment of Channell, J. in that case :—

"The doctrine of the modern cases seems to be that on parties subject to the jurisdiction of a foreign Court who have been duly and in accordance with our idea of natural justice summoned to that foreign Court, that is to say have been so summoned as to have had a hearing or an opportunity of having a hearing, there is imposed by our law an obligation enforceable here to abide by and perform the judgment of that Court to whose jurisdiction they are so subject....."

It will be observed that all that is required according to this passage is that the party should have an opportunity of having a hearing.

Mr. Hume for the plaintiff relied on *Emanuel v. Symon*[2] and contended that the defendant being a subject of the foreign country was bound to obey the judgment. He also relied on section 114 of the Evidence Ordinance as raising a presumption that the judgment was regularly given and contended that the English Courts will not examine the practice and procedure of a foreign Court but will give effect to the judgment even if it is obvious that the foreign Court has not observed the correct procedure. He relied also on *Pemberton v. Hughes*[3].

Mr. Ong Huck Lim sought to distinguish *Pemberton v. Hughes*[3] on the ground that it was a case where both parties were resident in Florida. It is true that this case is distinguishable in regard to its facts but in their judgments all three members of the Court set out the principle upon which their decision proceeded and the following passages from two of those judgments appear to me to support Mr. Hume's contentions :—

Lindley, M.R. (at page 792): "It may be safely said that, in the opinion of writers on international law, and for international purposes, the jurisdiction or the competency of a Court does not depend upon the exact observance of its own rules of procedure. The defendant's contention is based upon the assumption that an irregularity in procedure of a foreign Court of competent jurisdiction in the sense above explained is a matter which the Courts of this country are bound to recognise if such irregularity involves nullity of sentence. No authority can be found for any such proposition; and, although I am not aware of any English decision exactly to the contrary, there are many which are so inconsistent with it as to shew that it cannot be accepted."

Vaughan Williams, L.J. (at page 796-7): "Here it is alleged there was no proper service. The true principle seems to me to be that a judgment, whether in **personam** or in **rem**, of a superior court having jurisdiction over the person, must be treated as valid till set aside either by the Court itself or by some proceeding in the nature of a writ of error, unless there has been some defect in the initiation of proceedings, or in the course of proceedings, which would make it contrary to natural justice to treat the foreign judgment as valid, as, for instance, a case where there had been not only no service of process, but no knowledge of it. The allegation of no service alone would not in such a case avail the defendant: **Duchanan v. Bucker** (9 East, 192); **Ferguson v. Mahon** (11 Ad. & B. 179); **Bullen & Leake's Precedents of Pleadings**, 5th ed. p. 748."

According to the judgment of Buckley, J. in *Emanuel v. Symon*[2] (at page 309) one of the cases where foreign judgments can be enforced is where the defendant, as in the present case, is a subject of the country where the judgment was pronounced. I think there is no doubt that the Court in which the judgment in the present case was given was competent to deal with the subject matter of the suit. It was, therefore, in my opinion a Court of competent jurisdiction in the sense of that expression as commonly used in connection with cases of this kind. I think, therefore, that any variations there may be between the procedure of the Indian Courts and of our Courts as to methods of service or substituted service are matters which the Courts here will not look into. Following the wording of the judgment of Channell, J. quoted above I think it is clear that the defendant was so summoned as to have had an opportunity of having a hearing by the foreign Court and that he deliberately refrained from exercising that opportunity.

There is one decision which was not directly cited to me but which is mentioned in the footnote to Rule 79 of *Dicey's Conflict of Laws* upon which Mr. Ong Huck Lim relied. This is the case of *Jeannot v. Puerst*[4] where it was held that the judgment of a French tribunal was not contrary to natural justice, notwithstanding that the defendants were informed of the proceedings at a time when it was practically impossible for them to appear on the day named. This decision appears to me to confirm the view that I formed that in the present case the defendant had sufficient notice of the proceedings to destroy the defence that the foreign judgment was contrary to natural justice.

For the above reasons I gave judgment for the plaintiff with costs.

Judgment for the plaintiff.